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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16
17 LAUREN HUGHES and JANE DOE,
18 individually and on behalf of all others
similarly situated,

19 Plaintiffs,
20 v.
21 APPLE INC., a California corporation,
22 Defendant.

Case No. 3:22-cv-07668-VC
**JOINT CASE MANAGEMENT
STATEMENT**

Date: April 7, 2023
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Complaint Filed: December 5, 2022

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Civil Local Rule 16-9, the Standing Order for All Judges of the Northern District of California, this District's Standing Order regarding Contents of Joint Case Management Statement, this Court's Civil Standing Order, and this Court's March 6, 2023 Order (ECF No. 32), Plaintiffs Lauren Hughes and Jane Doe ("Plaintiffs") and Defendant Apple Inc. ("Apple") (collectively, the "Parties") hereby submit the following Joint Case Management Conference Statement.

1. Jurisdiction and Service

Plaintiffs allege in the Complaint that this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005 ("CAFA").

The Parties are unaware of any unresolved issues regarding personal jurisdiction or venue.

The Parties are unaware of any additional entities that remain to be served.

2. Facts

Plaintiffs allege that third parties used the AirTag—a quarter-sized device developed for the purpose of transmitting its location—to stalk them. Plaintiffs seek to hold Apple, which manufactures and sells AirTags, liable for the following claims: (I) negligence; (II) strict liability – design defect (consumer expectation test); (III) strict liability-design defect (risk-benefit test); (IV) unjust enrichment; (V) intrusion upon seclusion; (VI) violations of California's Constitutional Right to Privacy; (VII) violations of CIPA, Cal. Pen. C. §§ 630, *et seq.*; (VIII) negligence *per se*; (IX) violations of California's Unfair Competition Law (unlawful prong); (X) violations of California's Unfair Competition Law (unfair prong); (XI) violations of California's Unfair Competition Law (fraudulent prong); (XII) violations of N.Y. Business Law § 349. Apple denies liability for these claims.

The factual issues in dispute include, among other things, (1) whether Apple intentionally intruded upon Plaintiffs' privacy interests; (2) whether Apple used an electronic tracking device to determine Plaintiffs' locations or movements; (3) whether Apple made alleged misrepresentations; (4) whether Plaintiffs relied on any alleged misrepresentations; and (5) whether there were feasible alternative designs for AirTags.

28

1 **3. Legal Issues**

2 The legal issues will include, among others: (1) whether the challenged conduct is
 3 violative of any of the causes of action alleged in the Complaint; (2) whether the proposed action
 4 can be maintained as a class action; and (3) whether Plaintiffs are entitled to any injunctive relief,
 5 declaratory relief, additional equitable relief, and/or damages from Apple.

6 **4. Motions**

7 The Parties have agreed to seek an alternative means of resolving the dispute without the
 8 need to consume scarce judicial resources. The Parties have scheduled a mediation session for
 9 April 27, 2023. The Parties respectfully request a stay of this action pending the outcome of the
 10 Parties' efforts to resolve the dispute through alternative means.

11 **Motion to Dismiss:** If the action is not stayed, Apple intends to move to dismiss the
 12 Complaint, and Plaintiffs intend to oppose such motion.

13 **Class Certification:** Plaintiffs anticipate moving for class certification consistent with the
 14 schedule below. Apple plans to oppose Plaintiffs' motion for class certification.

15 **Other Dispositive and Miscellaneous Motions:** Each party reserves its rights to file
 16 other dispositive motions, including for full or partial summary judgment. The Parties may also
 17 file discovery-related motions, if necessary.

18 **5. Amendment of Pleadings**

19 Plaintiffs reserve the right to amend their Complaint to resolve factual issues identified in
 20 a Motion to Dismiss and/or to include additional named representatives and state law claims.
 21 Based on the Court's standing order, the deadline for amended pleadings should be sixty (60)
 22 days following the Case Management Conference.

23 **6. Evidence Preservation**

24 The Parties have discussed the preservation of discoverable information. No Party has
 25 identified any issues regarding their ability to fulfill their preservation obligations. The Parties
 26 have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information
 27 ("ESI Guidelines"). The Parties will meet and confer regarding reasonable and proportionate
 28 steps taken to preserve evidence relevant to the issues reasonably evident in this action.

1 **7. Disclosures**

2 If the action is not stayed, the Parties will exchange initial disclosures within 21 days after
 3 the pleadings are settled.

4 **8. Discovery**

5 **A. Identified Discovery Disputes**

6 At present no discovery has been propounded and the Parties are not aware of any discovery
 7 disputes at this time.

8 **B. Proposed Discovery Plan Pursuant to Fed. R. Civ. P. 26(f)**

9 **i. Timing of Discovery**

10 The Parties both believe that a stay of this action pending the outcome of the Parties'
 11 efforts to resolve the dispute through alternative means would serve the interests of efficiency and
 12 judicial economy. The Parties thus propose to stay formal discovery pending completion of the
 13 efforts to resolve the dispute through alternative means, or if the case is not stayed, after the
 14 pleadings are settled in this case.

15 **ii. Written Discovery and Objections**

16 The Parties agree to ten (10) fact depositions, with the caveat that Apple will be entitled to
 17 additional fact depositions in the event that additional plaintiffs are added to the operative
 18 Complaint.

19 The Parties reserve the right to take additional depositions, or serve additional
 20 interrogatories above the number permitted under the Federal Rules, by stipulation or by motion
 21 if additional depositions or interrogatories are necessary and proportionate.

22 **iii. Service of Discovery**

23 The Parties agree to accept service of discovery and discovery responses by email and that
 24 such service will constitute service by mail.

25 **iv. Rule 26(f)(3)(A): What changes should be made in the timing, form, or**
requirement for disclosures under Rule 26(a)

27 If the action is not stayed, the Parties will exchange initial disclosures within 21 days of
 28 after the pleadings are settled.

1 v. **Rule 26(f)(3)(B): The subjects on which discovery may be needed,**
 2 **when discovery should be completed, and whether discovery should be**
 3 **conducted in phases or be limited to or focused upon particular issues.**

4 The Parties agree not to serve discovery requests pending the resolution of the
 5 motion to dismiss. If any claims survive the motion to dismiss, the Parties will meet and confer
 6 regarding a discovery schedule and whether discovery should be conducted in phases. The Parties
 7 anticipate that they will seek discovery regarding the subjects listed below.

8 **Plaintiffs' Position:** Plaintiffs anticipate seeking discovery regarding, among other topics,
 9 the following:

- 10 (1) all labeling, advertisement, and marketing of the Air Tag, including but not limited to
 public-facing representations regarding the safety of the product;
- 11 (2) all information concerning the design, development, implementation, updating,
 maintenance and/or testing of safety features associated with the AirTag, including but
 not limited to (a) device-based text notifications, (b) sound alerts, (c) the Tracker
 Detect app, and (d) efforts to coordinate with law enforcement;
- 12 (3) sales data for the AirTag, including the total number of units sold and total amount of
 money generated from the sales of the AirTag;
- 13 (4) all internal documents related to the use of AirTags to stalk, harass, or otherwise track
 individuals without their consent;
- 14 (5) all communications with third parties—including but not limited to individuals, law
 enforcement, advocacy groups, and governmental entities—concerning the use of
 AirTags to stalk, harass, or otherwise track individuals without their consent;
- 15 (6) any applicable insurance documents; and
- 16 (7) any affirmative defenses Defendant may raise.

17 **Defendant's Position:** Apple anticipates that discovery will include the circumstances of
 18 Plaintiffs' alleged experiences with AirTags; Plaintiffs' alleged knowledge of and reliance on any
 19 of the misrepresentations or omissions alleged in the Complaint; whether Plaintiffs' claims are
 20 typical of the claims of other members of any putative classes; whether common questions of fact

1 or law predominate over individual inquiries; and whether Plaintiffs can demonstrate individual
 2 and class-wide damages.

3 **vi. Rule 26(f)(3)(C): Any issues relating to disclosure or discovery of**
 4 **electronically stored information, including the form or forms in which**
 5 **it should be produced.**

6 At the appropriate time, the Parties have agreed to meet and confer on protocols for
 7 production of ESI, and shall submit a proposed protective order (discussed *infra*).

8 **vii. Rule 26(f)(3)(D): Any issues relating to claims of privilege or of**
 9 **protection as to trial-preparation material, including — if the parties**
 10 **agree on a procedure to assert such claims after production —**
 11 **whether to ask the court to include their agreement in an order.**

12 At this time, the Parties have not identified any issues relating to claims of privilege or
 13 protection as to trial preparation material. The parties agree to meet and confer regarding the
 14 appropriate scope, content, and form for the privilege log. The Parties propose that any
 15 inadvertent disclosure of privileged material will be governed by Federal Rule of Civil Procedure
 16 26(b)(5)(B) and the terms of the protective order to be agreed upon by the Parties in this action.

17 **Logs of Privileged Documents:** The Parties anticipate that during discovery, certain
 18 documents will need to be withheld based on the attorney-client or work product doctrine. To
 19 reduce costs and in accordance with Federal Rule of Civil Procedure 26(b)(5), the Parties propose
 20 that the withholding party may describe any withheld documents by categories where voluminous
 21 documents are claimed to be privileged or protected and providing a document-by-document
 22 privilege log would be unduly burdensome. The Parties further agree that they shall not be
 23 required to log (1) communications between the Parties and their outside counsel after the date of
 24 the initial complaint in this matter (December 5, 2022); (2) internal communications among
 25 counsel after December 5, 2022; and (3) any documents that have been produced in redacted
 26 form.

viii. Rule 26(f)(3)(E): What changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or the Local Rules, and what other limitations should be imposed.

The Parties do not currently propose any changes to the limitations on discovery or discovery schedule provided by the Court, the Federal Rules of Civil Procedure or Local Rules.

ix. Rule 26(f)(3)(F): Any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c).

The Parties will meet and confer to negotiate a protective order. Other than a protective order, the Parties do not currently request any additional orders under Rule 26(c) or Rule 16(b)-(c).

9. Class Actions

Plaintiffs' Position: This action is being brought and is maintainable as a class action under Fed. R. Civ. P. 23(a), (b)(1), (b)(2), (b)(3) and/or (c)(4) on behalf of the proposed Classes and Subclasses identified in Plaintiffs' Complaint. *See*, ECF No. 1 at ¶ 85.

Defendant's Position: Apple disputes Plaintiffs' contention that the action is properly maintainable as a class action. The proposed classes cannot be certified because, among other reasons, Plaintiffs cannot establish class-wide damages, and individual issues will predominate.

10. Related Cases

The Parties are aware of *Taylor v. Shenberg, et al.*, No. 2211-CC00025 in the Eleventh Judicial Circuit, State of Missouri Circuit Judge Division. The Parties are not currently aware of any other related cases.

11 Belief

Plaintiffs' Statement: Plaintiffs seek injunctive relief, declaratory relief, damages and/or restitution, and reasonable attorneys' fees, costs, and expenses.

Defendant's Statement: Plaintiffs are not entitled to any of the relief requested from Apple.

12. Settlement and ADR

Parties' Joint Statement: The Parties have agreed to private mediation and scheduled a

1 mediation session on April 27, 2023.

2 **Plaintiffs' Additional Statement:** Plaintiffs' primary concern in this litigation is to
 3 obtain injunctive relief that remedies the immediate and ongoing risks to safety caused by the
 4 AirTag as it currently operates. But finding solutions involves working with complex technology
 5 not only of the AirTag product but also other Apple products and IP, and even with technology of
 6 non-parties. *See*, Complaint at ¶¶ 41-61. Because of these issues of scope, and in light of unique
 7 nature of the relief sought, Plaintiffs sought to begin an early mediation process so that Plaintiffs
 8 may evaluate how the safety needs of the Class may best be protected in light of Apple's existing
 9 technology, identify all stakeholders within Apple's organization who would need to participate
 10 in the development and implementation of changes, and accordingly identify areas of alignment
 11 and find achievable solutions in as expeditious a manner as possible.

12 Because any resolution is unlikely to be reached in a single mediation, the Parties have
 13 sought a stay of six (6) months, in order to invest all of their time and resources into their
 14 attempts to resolve this matter.

15 **13. Other References**

16 The Parties agree there is no need for a reference to a special master or Judicial Panel on
 17 Multidistrict Litigation.

18 **14. Narrowing of the Issues**

19 At this stage, the Parties have not identified potential ways to expedite the presentation of
 20 evidence at trial or otherwise narrow the litigation by agreement. The Parties will meet and confer
 21 about potential ways to narrow the litigation at an appropriate time.

22 **15. Expedited Trial Procedure**

23 The Parties agree that this case is not appropriate to be handled under the Expedited Trial
 24 Procedure of General Order No. 64 Attachment A.

25 **16. Scheduling**

26 The Parties filed a stipulation to stay the case pending the outcome of the Parties' efforts
 27 to resolve the dispute through alternative means (ECF No. 34), which the Court denied on March
 28 29, 2023 (ECF No. 37). The Parties thus respectfully request a shorter stay until after the April

1 27, 2023 mediation and propose that the Parties submit a joint status update on May 5, 2023 and
 2 that, if necessary, the Court hold a status conference on May 12, 2023.

3 In the alternative, the Parties propose the following case schedule:

DEADLINE	PROPOSAL
Apple's deadline to file a motion to dismiss	60 days from the mediation scheduled on April 27, 2023
Plaintiffs' deadline to file an opposition to Apple's motion to dismiss	90 days from the mediation scheduled on April 27, 2023
Last day to amend the pleadings	90 days from the mediation scheduled on April 27, 2023
Apple's deadline to file a reply in support of its motion to dismiss	105 days from the mediation scheduled on April 27, 2023
Hearing on the motion to dismiss	The earliest Thursday the Court is available following Apple's filing of its reply in support of its motion to dismiss at 2:00 p.m.
Deadline for class certification discovery	180 days after the pleadings are settled
Plaintiffs' deadline to file class certification motion and expert report on class certification	14 days from the close of class certification discovery
Apple's deadline to respond to class certification motion and to file responsive expert reports on class certification	35 days from the filing of Plaintiffs' motion for class certification
Plaintiffs' deadline to file a reply in support of class certification motion and rebuttal expert reports on class certification	14 days from filing of Apple's opposition to Plaintiffs' motion for class certification
Fact discovery cut-off	270 days after the pleadings are settled
Deadline for opening merits expert reports	21 days from the fact discovery cut-off
Deadline for rebuttal expert reports	35 days from the deadline for opening merits expert reports
Expert discovery cut-off	30 days from the deadline for rebuttal expert reports

DEADLINE	PROPOSAL
Summary judgment and <i>Daubert</i> motions	30 days from the expert discovery cut-off
Opposition to summary judgment and <i>Daubert</i> motions	35 days from filing of summary judgment and <i>Daubert</i> motions
Replies in Support of Summary Judgment and <i>Daubert</i> Motions	21 days from filing of oppositions to summary judgment and <i>Daubert</i> motions
Final pretrial conference	90 days after the hearing on Motions for Summary Judgment
Trial	2 weeks after the Final pretrial conference

11 **17. Trial**

12 Plaintiffs request a jury trial. At this time, the Parties believe that it is premature to
 13 address trial-setting issues because the Parties are seeking an alternative means of resolving the
 14 dispute. Additionally, the length of any trial will largely depend on the outcome of Apple's
 15 motion to dismiss, any motion for class certification and any motions for summary judgment.
 16 Thus, the Parties propose that any trial-setting issues be discussed at a case management
 17 conference to be held following the Court's ruling on class certification, if any.

18 **18. Disclosure of Non-party Interested Entities or Persons**

19 **Plaintiffs' Position:** Plaintiffs do not believe any non-party entities or persons have an
 20 interest in this case.

21 **Defendant's Position:** Apple has filed the Certificate of Interested Entities or Persons
 22 required by Civil Local Rule 3-15. (ECF No. 23.) Apple confirms that the statements therein are
 23 currently accurate and that it has no parent corporations, there is no publicly held company that
 24 owns 10% or more of Apple's stock, and there is no other kind of interest that could be
 25 substantially affected by the outcome of the proceeding.

26 **19. Professional Conduct**

27 All attorneys of record for the Parties have reviewed the Guidelines for Professional
 28 Conduct for the Northern District of California.

1 **20. Other Matters**

2 None.

3 Dated: March 31, 2023

TIFFANY CHEUNG
MORRISON & FOERSTER LLP

5 By: /s/ Tiffany Cheung
6 TIFFANY CHEUNG

7 Attorneys for Defendant
8 APPLE INC.

9 Dated: March 31, 2023

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13 GILLIAN L. WADE

14 Attorneys for Plaintiffs
15 LAUREN HUGHES AND JANE DOE

ECF ATTESTATION

I, TIFFANY CHEUNG, the ECF User whose ID and password are being used to file this
JOINT CASE MANAGEMENT STATEMENT, in compliance with Civil Local Rule 5-1(i)(3),
hereby attest that counsel for Plaintiffs has concurred in this filing.

Dated: March 31, 2023

TIFFANY CHEUNG
MORRISON & FOERSTER LLP

By: */s/ Tiffany Cheung*
TIFFANY CHEUNG

Attorneys for Defendant
APPLE INC.